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NANCY SWEENEY
CLERK DISTRICT COURT

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Attorneys for Respondent Montana Board of Housing

BY DEAN SCHNECKLOTH

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

FT. HARRISON VETERANS RESIDENCE, Limited Partnership,)	Cause No. DDV-2012-356
)	
)	
Petitioner,)	AFFIDAVIT OF
)	
vs.)	BRUCE BRENSDAL
)	
MONTANA BOARD OF HOUSING,)	
)	
Respondent,)	
)	
CENTER STREET LP, SWEET GRASS)	
APARTMENTS LP, SOROPTIMIST)	
VILLAGE LP, FARMHOUSE PARTNERS-)	
HAGGERTY LP and PARKVIEW VILLAGE)	
LLP,)	
)	
Intervenors.)	

STATE OF MONTANA)
 : ss.
County of LEWIS & CLARK)

I, Bruce Brensdal, being first duly sworn upon oath, depose and say:

1. I have personal knowledge of the matters set forth in this Affidavit.
2. I am the Executive Director of the Montana Board of Housing ("Board"),
and I have been employed in that position since 2000. Prior to employment as the

COPY

Executive Director, I was employed by the Board as the Manager of the Board's Multifamily Program for a period of five years.

3. In my capacity as Executive Director and in my previous capacity as Multifamily Program Manager, I have been directly involved in and responsible for the Board's Low Income Housing Tax Credits ("LIHTC" or "tax credits") application, scoring, recommendation, award, reservation and allocation processes. I have performed scoring of applications, communicated with applicants and prospective applicants regarding questions on the application process and criteria, developed the Board's annual Qualified Allocation Plans ("QAP"), scored applications, reviewed application scoring with other Board staff and the Board, and presented staff recommendations to the Board at its annual allocation meeting. I personally participated in the entire tax credit application and allocation award process for 2012, including scoring of the 2012 tax credit applications.

4. In the process of scoring the 2012 LIHTC applications, I met with Board staff Mary Bair and Kellie Guariglia to review their preliminary scoring of the applications. One of the purposes of my review of their preliminary scoring was to assure that the scoring criteria were interpreted and applied consistently among the current applicants and, to the extent the criteria remain unchanged from prior rounds, consistent with interpretation and application of the scoring criteria in prior allocation rounds.

5. The scores that were awarded to the respective 2012 LIHTC applicants on the various Development Selection Criteria of the QAP are shown in the scoring table ("Scoring Table"), a true and correct copy of which is attached hereto as Exhibit N and is also Exhibit 6 to the Deposition of Mary Bair ("Bair Dep.").

Project Location

6. The 2012 QAP included the following Project Location criteria:

Project Location (0-3 points): Developments located in a given area where amenities and/or services will be available to tenants (schools, medical services, shopping, transportation). (0-3 points)

QAP, p. 20, Exh. 1, Bair Dep.

7. As part of the application evaluation process, Board staff made in-person visits to all applicant project locations, and during these site visits observed the locations, their surrounding areas, and their proximity to services and amenities.

8. The Ft. Harrison Veterans Residence ("FHVR") project's location is distinctly different from that of any other 2012 applicant project with respect to availability of amenities and services to tenants. The FHVR project is located at Fort Harrison, well outside of Helena, where schools, shopping and other services and amenities are located. FHVR's project is the only applicant project located in an area separated from the nearest town or city by an undeveloped, rural area crossed only by highways. The distance and isolation of the FHVR project location from most amenities and services is not addressed by consistently available transportation services that would make amenities and services readily available to tenants.

9. FHVR was awarded 2 of 3 possible points for project location. FHVR received 2 points because of the project's close proximity to medical services. All of the other applicants received 3 points for project location. However, FHVR's project did not receive 3 points because of its distances and isolation from other amenities and services and because the lack of readily available transportation for tenants make such amenities and services less accessible and available to tenants.

10. The nearest grocery store identified in the FHVR application is located 3.95 miles from the project location. The application referenced the Broadwater Market, at a distance of 1.28 miles, but that market is a convenience store. The nearest elementary school, Kessler School, is located from 1.58 miles from the project. Except for medical services, other services, such as banks, are located at considerable distances from the project. *See* FHVR's Narrative Regarding Development Selection Criteria ("FHVR Narrative"), a true and correct copy of which is attached hereto as Exhibit O and is also Exhibit 8 to the Bair Dep. The FHVR Narrative is part of FHVR's 2012 LIHTC application.

11. With respect to transportation, FHVR's application identified the City of Helena's "HATS" as the source of tenant transportation. The application identified 3 HATS services -- the Checkpoint bus, the East Valley bus, and Curb-to-Curb buses. The application describes the East Valley Bus as serving areas to the east of Helena, including East Helena, but not including Fort Harrison, which is located northwest of Helena. The application states that the Checkpoint Bus is a set route and that the closest scheduled bus stop is 3.54 miles from the project. The application indicates that the Curb-to-Curb Bus runs half-hourly from 6:30 a.m. to 5:30 p.m. For those riders not located by a Checkpoint bus stop, the bus picks up at the closest curb to their location. This is the only identified transportation service potentially available at Fort Harrison from 6:30 a.m. to 5:30 p.m. and it is "subject to availability" unless reserved a day ahead of time. The application stated: "It is requested that rides be scheduled for next day service or the ride will be subject to availability." See FHVR Narrative, Exhibit O. No transportation service is shown for the hours between 5:30 p.m. and 6:30 a.m. *Id.*

12. Amenities and services are substantially closer and more available to tenants at the Blackfeet Homes V ("Blackfeet") project location than at the FHVR project location. Although the Blackfeet project is located in a generally remote area of the state, the location is not remote from tenant amenities and services. The project is located on the edge of -- but within -- the town of Browning, on city streets, and where "on-call, on-site pick up services" are available. See Blackfeet Narrative Addressing the Twelve Development Criteria, a true and correct copy of which is attached hereto as Exhibit P and is also Exhibit 7 to the Bair Dep. Similarly, other applicant projects, such as Soroptimist Village, Parkview Apartments and Depot Place, are located in or on the edge of towns and cities where there is greater proximity to and availability of amenities and services for tenants.

13. Based upon the foregoing considerations and the QAP language, Board staff reasonably awarded FHVR 2 of 3 possible points for Project Location.

Tenant Populations with Special Housing Needs

14. The 2012 QAP included the following “Tenant Populations with Special Housing Needs” (“Special Needs Targeting”) criteria:

Tenant Populations With Special Housing Needs* (0-10 points): Scoring in this category will be based on identified community and state housing needs, and the extent to which the proposed project addresses those needs. A project will receive *one (1) point for each 10% of the units targeting the following identified needs:*

- Units targeted specifically for individuals with children (Family units 2 bedrooms).
- Large family units (3 and 4 bedroom).
- Handicapped units exceeding minimum fair housing requirements.
- Units targeted specifically for elderly.
- Units targeted *specifically* [for] persons of disability (must include written agreement with service provider or advocate for the target group).

(emphasis added) QAP, p. 23, Exh. 1, Bair Dep.

15. FHVR was awarded 7 of 10 possible points for Special Needs Targeting. FHVR received 7 points based upon specifying in its application that 72% of its units (29 of 40 units) would be 2 or 4 bedroom units, i.e., Family and Large Family units. These units are identifiable as meeting the targeted category based upon their physical characteristics, i.e., having either 2 or 4 bedrooms.

16. FHVR’s application indicated that 6 units would be made fully accessible and that “all 40 units” would be targeted to “homeless, disabled, and at-risk of homelessness Veterans” but only that *a minimum of 40% of the units* would house *disabled* veterans. The application did not specify that these accessible and disabled units would be different units than those targeted as Family and Large Family units.

17. The FHVR project did not receive an additional 3 points based upon accessibility or disability targeting because its application did not target the remaining 11 units (i.e., those not already targeted as Family or Large Family) to at least one of the specified need categories. FHVR’s application did not specify that the accessibility and disability targeting would apply to any of the remaining 11 units not already targeted as

Family or Large Family. Based upon its application, FHVR could use 16 of the 29 targeted Family/Large Family units to provide the minimum 40% of units for disabled veterans and 6 of the 29 targeted Family and Large Family units to provide the 6 accessible units. The remaining 11 units that are not targeted for Family and Large Family units could then be rented to tenants not meeting any of the specified special need categories.

18. Under the Special Needs Targeting criteria, an applicant is not entitled to points for units that are not targeted to the specified need categories. To obtain 100% of the possible points for Special Needs Targeting, the application must specifically target 100% of the project units to at least one of the specified need categories. FHVR's application targeted only 29 of its 40 units and did not commit to targeting of the remaining 11 units to any of the specified need categories. Based upon the foregoing considerations and the QAP language, Board staff reasonably awarded FHVR 7 of 10 possible points for Special Needs Targeting.

19. Mary Bair testified in her deposition in this matter that another reason for not awarding FHVR an additional 3 points for Special Needs Targeting was that its disability service agreement did not meet the QAP requirements for disability targeting. During scoring, Board staff discussed whether or not the agreement was adequate to meet the QAP standard, but I did not agree to or approve FHVR's score on this basis. Regardless of whether the service agreement met requirements, the additional 3 points could not have been awarded to FHVR because FHVR did not target 11 of the units to any of the specified need categories.

20. The Soroptimist Village, Blackfeet Homes V and Depot Place projects were each awarded 10 of 10 possible points for Special Needs Targeting because their respective applications targeted 100% of their respective units for elderly tenants. None of the project units for these applicants had any units that were not targeted to a specified need category.

21. Parkview was erroneously awarded 10 of 10 possible points for Special Needs Targeting; it should have been awarded only 8 points in this category. Parkview targeted 12 of 20 units as 2 bedroom (Family) units, 2 of 20 units as 3 bedroom (Large Family) units, and 2 of 20 separate units as accessible units, thereby targeting 16 of 20 units to the specified need categories. This entitled Parkview to 8 of 10 possible points. Parkview was not entitled to an award of the additional 2 possible points because it did not target 4 of the 20 units to any of the specified need categories.

Demonstration of Montana Presence

22. The 2012 QAP included the following criteria regarding Demonstration of a Montana Presence:

Demonstration of a Montana Presence. In order to assist in providing a better quality product consistent with the purposes of the MBOH and federal law, a development will qualify for points if a member of its development team is Montana based. One (1) point will be awarded for each of the following (0-4 points maximum):

- Developer or Project Manager. (A developer has existing affordable housing project(s) in Montana with a demonstrated quality product.)
- Contractor or Construction Manager
- Either the Consultant, Syndicator, Attorney, Accountant, Architect or Engineers

QAP, p. 23, Exh. 1, Bair Dep.

23. FHVR was awarded 2 of 4 possible points in the Montana Presence category, because its application did not indicate that its developer, project manager, contractor or construction manager had any Montana Presence, such as owning an existing affordable housing project in Montana, being licensed in Montana or having an office in Montana.

24. FHVR's application identifies the project team members as follows:

- Developer and Project Manager - Communities for Veterans Montana, LLC, including Donald Paxton and Craig Taylor, responsible to supervise

project through the development and operations process. No information was presented to indicate this entity has any Montana Presence.

- Contractor and Construction Manager - CORE Construction, the DRG Group and VOA Associates, responsible for permitting and approvals, and for supervision of architectural and engineering aspects of project. The application stated that "John Wiseman (CORE Construction) is the head of construction and is in charge of managing the construction process" and "ensures that no step is missed from the time construction begins until completion." In addition, CORE Construction is identified as a "Construction Manager, Design-Builder and General Contracting firm". No information was presented to indicate this entity has any Montana Presence.
- "Development Manager/Historic Consultant" -- Jon Axline, Montana, described as having responsibility for the historic preservation component of the project and seeking qualification of project structures for the federal Historic Tax Credit program.
- "Architect/Construction Manager" -- Schlenker & McKittrick/Tim Meldrum, Montana, described as having responsibility related to seismic stabilization, lead and asbestos abatement/removal, design, coordination with structural, environmental and historic consultants on design, materials and procedures for the rehabilitation.
- Engineer -- Robert Peccia & Associates, Montana, described as having responsibility for engineering duties.
- Architect/Land Planner/Environmental Consultant -- Land ARC, Montana, described as having responsibility for landscaping, environmental-ecological and energy-green aspects of the development.

See FHVR Narrative, Exhibit O; Donald Paxton's April 5, 2012 letter to Mary Bair, Exhibit 3 to Bair Dep.; Exhibit 4 to FHVR Narrative, a true and correct copy of which is attached hereto as Exhibit Q.

25. FHVR's application, read together with Donald Paxton's April 5, 2012 letter to Mary Bair (Bair Deposition Exhibit 3), indicates that Communities for Veterans Montana, LLC is FHVR's developer and project manager and that CORE Construction is its contractor and construction manager. These entities have overall development, construction and related management and supervisory responsibility for the project. FHVR presented no information to indicate either of these entities has any Montana Presence.

26. Although FHVR assigned the title “Development Manager/Historic Consultant” to its Montana-based historic consultant, Jon Axline, and “Architect/Construction Manager” to its Montana-based architect, Schlenker & McKittrick/Tim Meldrum, FHVR’s descriptions of their respective responsibilities demonstrate that their roles are more limited consulting and architect roles related to particular aspects of the project. These professionals are not the project’s developer, project manager, contractor or construction manager. Based upon the descriptions provided in the application and letter, those roles are assigned to Communities for Veterans Montana, LLC and CORE Construction.

27. All of the Montana-based professionals identified in FHVR’s application and letter fall within the “Consultant, Syndicator, Attorney, Accountant, Architect or Engineers” bullet under the Montana Presence criteria. FHVR’s application and letter met only 1 of the 3 bullet points for Montana Presence. Its application and letter did not demonstrate any of the significant roles of developer, project manager, contractor or construction manager as being assigned to members with Montana Presence.

28. FHVR was the only applicant that had no Montana Presence in the significant roles of developer, project manager, contractor or construction manager for its project.

29. Based upon the foregoing considerations and the QAP language, Board staff reasonably awarded FHVR 2 of 4 possible points for Montana Presence.

Energy and Green Building Requirements

30. The 2012 QAP also included Energy and Green Building criteria as part of the Project Characteristics criteria. These criteria allow points for meeting each of several Energy and Green building requirements. Under the QAP Energy and Green scoring criteria, certain “threshold” requirements for the Energy portion must be met in full to obtain any points for discretionary energy points, and certain “threshold” requirements for the Green Building portion must be met in full to obtain any points for discretionary Green Building points. In addition, applicants were required to submit with

their application a letter from an architect confirming the initiatives incorporated into the project and explaining how, and by what amount, certain threshold items will exceed the IECC 2009 standards. *See* QAP, pp. 20-22, Exhibit 1 to Bair Dep.

31. Based upon the staff's review and actual scoring of the Energy and Green requirements under the QAP, it appeared the criteria were not clear to a significant number of applicants. Board staff then awarded all applicants 10 of 10 possible points in Energy and Green category, rather than applying the actual scores to which each applicant was entitled under the QAP provisions.

32. FHVR's actual score for Energy and Green requirements was 6 of 10 possible points. For the Energy threshold requirements, FHVR's architect letter stated that it would *meet* – but did not confirm that it would *exceed* -- IECC 2009 standards for insulation and windows. To obtain the 2 available points for insulation and windows, the architect's letter was required to state that the standard would be *exceeded*. As a result of not meeting these threshold items for Energy, FHVR was not entitled to any of the possible 2 points for Energy discretionary items. FHVR was entitled to 2 points for the Energy threshold furnace/boiler and Energy Star requirements, 2 points for the Green threshold requirements, and 2 points for the Green discretionary requirements. Therefore, FHVR was entitled to only 6 of the 10 possible points for Energy and Green requirements.

33. The actual scores based upon the Energy and Green section of the QAP and the applications, and the net change in point total that would have resulted if the actual scores had been applied, are as follows:

<u>Applicant</u>	<u>Actual Score</u>	<u>Net Point Change</u>
Soroptimist Village	10 of 10 points	none
Blackfeet Homes V	10 of 10 points	none
Depot Place	10 of 10 points	none
Sweetgrass	10 of 10 points	none
Hillview	10 of 10 points	none
Aspen Place	10 of 10 points	none
Red Fox	10 of 10 points	none

Stoneridge	10 of 10 points	none
Parkview Apartments	7 of 10 points	minus 3 points
Deer Park	7 of 10 points	minus 3 points
FHVR/Freedoms' Path	6 of 10 points	minus 4 points
Courtyard Apartments	3 of 10 points	minus 7 points
Haggerty Lane	0 of 10 points	minus 10 points
Haven Homes	0 of 10 points	minus 10 points

Significance of Scoring Differences

34. If the Energy and Green actual scores are applied and if Parkview's score is corrected for Special Needs Targeting (*see* ¶ 21, above), the order of ranking based solely upon point scoring is as follows:

Applicant	Original Score	Energy/Green Adjustment	Adjusted Score	Original Rank/ Adjusted Rank
Soroptimist	106 points		106 points	1 -- 1
Blackfeet	105 points		105 points	T2 -- T2
Parkview	105 points	- 3 points - 2 points*	100 points	T2 -- 7
Depot	105 points		105 points	T2 -- T2
Hillview	105 points		105 points	T2 -- T2
Aspen	103 points		103 points	T6 -- T5
Stoneridge	103 points		103 points	T6 -- T5
Deer Park	102 points	- 3 points	99 points	8 -- 8
FHVR	100 points	- 4 points	96 points	9 -- 9
Red Fox	95 points		95 points	10 -- 10
Courtyard	93 points	- 7 points	86 points	11 -- 11

** 2 point deduction to correct Special Needs Targeting score*

Haggerty Lane, Sweet Grass and Haven Homes are not included in this list, because Haven Homes failed to meet the minimum threshold score for consideration, and because Haggerty Lane and Sweet Grass were entitled to tax credit awards from the small project set aside and therefore did not compete against FHVR for a tax credit award.

35. If the Energy and Green Requirement actual scores had been applied, then the order of ranking based solely upon point scoring would have changed for some

applicants. However, FHVR's application would have remained ranked 9th out of 11 competing applications and its project would not have been awarded tax credits based solely upon the scoring.

36. Further, if the Energy and Green Requirement actual scores had been applied, Hillview would have received a higher score than Parkview Apartments. Under this scenario, if the awards were made based solely upon scoring, Hillview rather than Parkview Apartments would have received an award. However, under the 2012 QAP, even though Parkview may have ranked lower than Hillview in scoring, the Board was entitled to award tax credits to Parkview rather than Hillview based upon Parkview's geographic location in Sidney and the extremely pressing housing needs in that area of the State created by the Bakken oil boom. Even if Parkview's score had been 5 points lower, staff would have recommended an award to Parkview for those reasons.

37. Even assuming for the sake of argument that FHVR was entitled to all of the 6 additional points it claims, with the application of the actual Energy and Green scoring, its total score would have been 102 points – tied for 7th place in scoring rank – and FHVR's project would not have been awarded tax credits based solely upon scoring.

38. For purposes of the Board's February 2012 meeting, at which applicants presented their projects to the Board, staff submitted substantial documentation regarding the projects to the Board. At that meeting, the Board heard detailed presentations from applicants regarding their respective projects. True and correct copies of the LIHTC materials submitted to the Board for the February 2012 Board meeting are attached hereto as Exhibit R.


39. In addition, in advance of the April 2012 award meeting, staff submitted detailed and comprehensive information to the Board regarding all aspects of each applicant project. This information included comprehensive summaries of each application. True and correct copies of the LIHTC materials submitted to the Board prior to its 2012 tax credit award determination are attached hereto as Exhibit S. The Board

also heard comment from applicants and members of the public regarding the characteristics and merits of, and the need for, the respective projects.

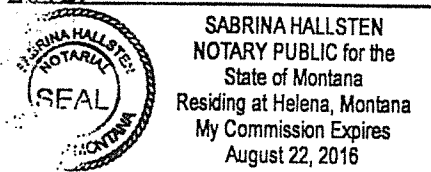
40. At its October 15, 2012 meeting, the Board approved the proposed 2013 QAP for submission to and approval by the Montana Governor. A true and correct copy of the 2013 QAP as submitted to the Governor for approval is attached hereto as Exhibit T. The Governor approved the 2013 QAP on October 26, 2012. A true and correct copy of the Governor's approval of the 2013 QAP is attached hereto as Exhibit U. The 2013 QAP will be, but has not yet been, proposed for adoption as an administrative rule.

Further your affiant sayeth not.

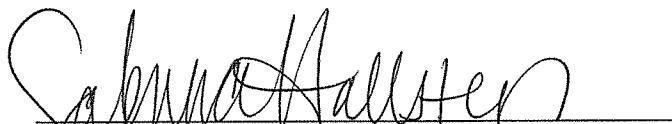
Dated this 29th day of October, 2012.


Bruce Brensdal

Subscribed and sworn to before me by Bruce Brensdal this 29th day of October, 2012.



(Notarial Seal)



Notary Public for the State of Montana
Printed Name: Sabrina Hallsten
Residing at: Helena, MT
My Commission expires: 8/22/2016

CERTIFICATE OF SERVICE

I, Gregory G. Gould, certify that on the 29th day of October, 2012, a true and accurate copy of the foregoing **AFFIDAVIT OF BRUCE BRENSDAL** was duly served upon counsel of record listed below by depositing the same, postage prepaid, in the United States mail to:

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